

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
Robert Winkworthjr individually and on
behalf of a class,

Plaintiff,

v.

Financial Asset Resolution, LLC

Defendant.
-----X

CV 14

2394

COMPLAINT – CLASS ACTION
JURY TRIAL DEMANDED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

KUNTZ, J.

★ APR 11 2014 ★

BROOKLYN OFFICE

POLLAK, M.J.

INTRODUCTION

1. Plaintiff brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Financial Asset Resolution, LLC. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt. 15 U.S.C. §§1692d, 1692e and 1692f.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA).

4. Venue and personal jurisdiction in this District are proper because the event giving rise to this lawsuit occurred within this district.

5. Plaintiff, Robert Winkworthjr, is an individual who resides in Richmond County, New York.

6. Defendant, Financial Asset Resolution, LLC is an Illinois limited liability company. Its registered agent is Austin C. Mansur, 875 N. Michigan Avenue, Suite 3620, Chicago, Illinois 60611.

7. Financial Asset Resolution, LLC is a debt collector as defined by the FDCPA.

FACTS

8. On or about July 29th, 2013, Plaintiff was sent the collection letter attached as Exhibit A, bearing Defendant's name.

9. In sending Exhibit A, defendants sought to collect a debt incurred for personal, family or household purposes and not for business purposes.

10. Exhibit A is a standard form document.

11. More than 100 examples of Exhibit A have been sent out during the last 12 months.

12. Exhibit A is sent out with the knowledge and consent of defendant.

13. Documents in the form represented by Exhibit A are regularly sent to collect delinquent debts.

14. Exhibit A provides "Unless you notify this office **in writing** within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid." (emphasis added).

VIOLATIONS ALLEGED

15. Defendant violated 15 U.S.C. §§1692, 1692g

16. Section 1692g provides:

§ 1692g. Validation of Debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

17. Defendant violated the above statute because Defendant required the dispute to be in writing when the statute does not require a dispute to be in writing to contest the debt. *Hooks v Forman, Holt, Eliades & Ravin, LLC* 717 F.3d 282 (Second Circuit, May 29th, 2013).

CLASS ALLEGATIONS

18. Plaintiff brings this action on behalf of a class, pursuant to Federal Rules of Civil Procedure Rule 23(a) and 23(b) (3).

19. The class consists of (a) all individuals (b) with a New York address (c) who were sent a letter in the form represented by Exhibit A (d) on or after a date one year prior to the filing of this action.

20. The class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 members of the class.

21. There are questions of law and fact common to the class, which common questions predominate over any questions relating to individual class members. The predominant common question is whether Exhibit A violates the FDCPA.

22. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

23. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

24. A class action is superior for the fair and efficient adjudication of this matter, in that individual actions are not economically feasible.

a. Members of the class are likely to be unaware of their rights;

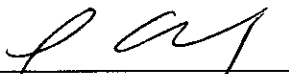
b. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

Dated: Atlanta, Georgia
April 7, 2013

The Law Offices of Shimshon Wexler, PC

By: 
Shimshon Wexler
Attorney for Plaintiff
216 West 104th St. #129
New York, NY 10025
Tel: (212)760-2400
Fax: (917)512-6132
swexleresq@gmail.com

Plaintiff requests a trial by jury on all issues so triable.

By: 
Shimshon Wexler

EXHIBIT A

PO BOX 59114
SCHAUMBURG, IL 60159-0114

RETURN SERVICE REQUESTED

DO NOT DISREGARD-CONFIDENTIAL AND URGENT

10354971 - 1161182 - 001
Robert Winkworth Jr
335 MAIN ST
STATEN ISLAND, NY 10307-1723

acct # 3532

Financial Asset Resolution, LLC
P.O. Box 59114
Schaumburg, IL 60159-0114Website: www.f-a-resolutions.comFax: (847) 868-9577
Toll Free: (888) 959-8878Regular Business Hours
Mon-Fri 9am-7pm CSTOriginal Balance: \$1,186.23
Interest Accrued: \$1,812.37
Payments Received: \$0.00
Current Balance: \$2,998.60

7/29/2013

Financial Asset Resolution, LLC#: 10354971

FLR001-0730-380712283-00188-188

Original Account #: 931100000908025

Original Creditor: 1st N AMER NATL BANK

Name(s) on Account: ROBERT WINKWORTH

COLLECTIONS NOTICE

This letter is to inform you that we have purchased the account identified above for collections.

You can make payment online at www.f-a-resolutions.com or return your payment in the amount of \$2,998.60 to the remittance address on the back of this letter using the enclosed envelope. We accept Check, ACH (check by phone), Cashier's Check, Money Order, and Credit Card.

You may also contact our office toll-free at (888) 959-8878 Ex:121 to discuss other payment arrangements.

Failure to respond to this notice will result in further collection activity to enforce the collection of this obligation in accordance with state and federal law.

Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

To speak with an account representative, please call toll-free (888) 959-8878 Ex:121 during regular business hours.

Pay online at <http://www.f-a-resolutions.com>

See reverse side for important information.

This is an attempt to collect a debt and any information obtained will be used for that purpose.
This communication is sent by Financial Asset Resolution, LLC, a debt collector.